ORIGINAL

Louisiana Attorney Disciplinary Board
FILED by: Lyn Amato
Docket# 12-DB-050
Filed-On 6/7/2013

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: BRANDI TRAYLOR BOUTWELL

NUMBER: 12-DB-050

RECOMMENDATION TO THE LOUISIANA SUPREME COURT

This is a disciplinary proceeding based upon formal charges filed by the Office of Disciplinary Counsel ("ODC") against Brandi Traylor Boutwell ("Respondent"), Louisiana Bar Roll No. 30767. On February 16, 2012, pursuant to the petition of ODC, the Louisiana Supreme Court placed Respondent on interim suspension. *In re Brandi Traylor Boutwell*, 12-0379 (La. 2/16/12), 82 So.3d 263.

The current charges, which consist of eleven counts, allege Respondent violated the following Rules of Professional Conduct ("Rule(s)"): 1.3 (failure to act with reasonable diligence and promptness in representing a client); 1.4 (lack of communication); 1.15 (failure to refund an unearned fee or to provide any accounting in the matters); 5.5 (engaging in the practice of law during a period of ineligibility); 8.1 (failure to cooperate with ODC in an investigation); 8.4 (misconduct).[1] The Hearing Committee assigned to this matter concluded that Respondent violated the Rules as charged and recommended that she be disbarred from the practice of law.

For the reasons stated below, the Board adopts the factual findings and legal conclusions of the Hearing Committee. However, the Board rejects the sanction recommended by the Committee as too lenient. Accordingly, the Board recommends that Respondent be permanently disbarred from the practice of law.

[1] *See* the attached Appendix for the text of the Rules.

PROCEDURAL HISTORY

On June 28, 2012, ODC filed formal charges against Respondent as a result of her alleged misconduct. The formal charges were served at Respondent's primary registration address via certified mail on July 2, 2012.[2] Respondent failed to file an answer to the charges. Subsequently on July 24, 2012, ODC filed a motion to declare the factual allegations deemed admitted. This motion was granted and notice of same was issued to Respondent on August 7, 2012. The Hearing Committee Chair found the factual allegations to have been deemed admitted and proven by clear and convincing evidence pursuant to Louisiana Supreme Court Rule XIX, Section 11(E)(3).[3]

On September 14, 2012, ODC filed its deemed admitted submission. This matter was assigned to Hearing Committee No. 35 ("the Committee").[4] The Committee issued its report on November 13, 2012, recommending that the Respondent be disbarred. ODC filed an objection to the report on November 13, 2012, arguing in favor of permanent disbarment.

ODC filed its pre-argument memorandum on January 2, 2013. Respondent did not file a pre-argument memorandum. The matter was originally set for oral argument before Panel "A"

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[2]The Formal Charges were served at 4901 Kinsey Drive, #1923, Tyler, Texas, 75703, and were signed by Eric Boutwell.

[3] That rule provides, in pertinent part:

> The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended. The factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13(b). Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

[4] Hearing Committee No. 35 was composed of Richard R. Storms (Committee Chair), Claude W. Bookter, Jr. (Lawyer Member), and Wyman F. Mardis (Public Member).

on January 31, 2013. On January 29, 2013, Respondent filed a motion to continue board oral arguments. On January 30, 2013, the Board granted Respondent's unopposed motion for a continuance. On January 31, 2013, the Board issued correspondence notifying the parties that the matter was continued until March 7, 2013.

Oral argument of this matter was held as scheduled before Panel "B" of the Adjudicative Committee of the Disciplinary Board[5] on March 7, 2013. Deputy Disciplinary Counsel James Standley, IV appeared on behalf of ODC. Respondent failed to appear.

THE FORMAL CHARGES

The formal charges state, in pertinent part:

> **COUNT I**
> ***(The Valentine Matter)***
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> On October 14, 2011, the Office of the Disciplinary Counsel received an ethical conduct complaint from Ms. Ginger L. Valentine alleging that Respondent had been retained to represent her in defending a lawsuit filed against her in the Fourth Judicial District Court in Ouachita Parish. Ms. Valentine indicates that she entered into an agreement with Respondent wherein Respondent would be compensated at the rate of $200.00 per hour. Ms. Valentine indicates that she paid Respondent $3,500.00; however, despite being granted at least one extension of time in which to file an answer, Respondent allowed a default judgment to be obtained against Ms. Valentine.
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> Upon being served with notice of the judgment entered against her, Ms. Valentine indicates that she terminated Respondent's services and engaged another attorney to assist her in this matter. Several requests were thereafter made to Respondent to provide an accounting of the fees paid in this matter and to refund any unearned fees; however, as of the date of this petition, no accounting of refund has been received by Ms. Valentine or her subsequent counsel.
>
> Ms. Valentine indicates that she has lost the funds advanced to Respondent in this matter and that she never received an accounting. She claims that Respondent allowed the plaintiff in the underlying litigation to obtain a default judgment against her during the course of Respondent's representation. Ms. Valentine indicates that this has proved problematic in her attempts to refinance her home.

[5] Board Panel "B" is composed of Jamie E. Fontenot (Chairman), Stephen F. Chiccarelli (Lawyer Member) and Linda P. Spain (Public Member).

Notification of the opening of the investigation into these allegations was sent to Respondent's then primary bar address on October 28, 2011. The postal receipt relative to this correspondence indicates that it was received by Respondent's then assistant, Ms. B. J. Graham, at said address on October 31, 2011. Despite the receipt of this communication, Respondent made no contact with ODC and provided no reply as required.

On December 1, 2011, the undersigned received a copy of an e-mail sent by Ms. Valentine's new attorney, Mark J. Neal, to Respondent referencing his attempts to secure an accounting and refund of the funds advanced to Respondent by Ms. Valentine. He indicates that Respondent had, on November 10, 2011, stated that she would refund the monies paid for representation to Ms. Valentine that week. He further indicates that, if the funds remained in Respondent's trust account, as they should have, that Respondent should be able to simply issue a check for any unearned fees in her possession.

On November 28, 2011, a subpoena was issued, commanding Respondent to appear at the Office of the Disciplinary Counsel on December 27, 2011 at 10:00 a.m. to render her sworn statement, as she had failed to provide any response to the notification letter sent on October 28, 2011. However, the Ouachita Parish Sheriff's Department returned the subpoena without service, as Respondent could not be located.

Said subpoena was reissued on January 3, 2012, and personally served upon Respondent on January 13, 2012 by ODC Staff Investigator Jeremy Norwood. Respondent was thereby commanded to appear for her sworn statement at 10:00 a.m. on Thursday, February 2, 2012 at the Office of the Disciplinary Counsel.

Despite having been duly served with this subpoena, Respondent failed to appear as directed or to provide any of the documents requested. Attempts to reach Respondent were unsuccessful.

Respondent's failure to provide a response when requested and her failure to comply with the subpoena constitute violations of Rule 8.l(c) of the Louisiana Rules of Professional Conduct. Her neglect of Ms. Valentine's legal matter, which resulted in the entry of a default judgment, would appear to be a violation of Rule 1.3. Her failure to refund the unearned funds advanced to her by Ms. Valentine upon the termination of her representation or to provide any accounting would constitute a violation of Rule 1.15. Her apparent conversion of said funds constitutes a violation of Rule 8.4.

COUNT II

(The Merritt Matter)

On December 7, 2011, ODC received the ethical conduct complaint of Dr. Tina Merritt and Mr. Farris Merritt of Bentonville, Arkansas. The Merritts

indicate that they retained Respondent in July of 2011 regarding a child custody matter. According to the complaint, a fee of $5,200.00 was tendered to Respondent to file a request for an emergency hearing concerning the custody of the minor child. The Merritts indicate that nothing was ever filed. Further, Respondent's telephone number was disconnected. By letter of November 1, 2011, Mr. Merritt terminated Respondent's services and requested a refund of the retainer. As of the date of the filing of the complaint, no refund had been received. Dr. Merritt has indicated that, as of February 3, 2012, no communication has been received from Respondent.

A copy of the complaint was forwarded to Respondent at all known addresses, via certified mail, along with ODC's notification letters of December 13, 2011 and December 29, 2011, requiring a written response within fifteen days. A return receipt was eventually received, confirming delivery of the notification at Respondent's home address, evidencing its delivery on January 11, 2012. As of the date of the filing of this petition, no reply has been received by ODC.

The allegations of the complaint suggest that Respondent has violated Rules 1.3 and 1.4 of the Louisiana Rules of Professional Conduct in that it would appear that Respondent has neglected the Merritts' legal matter and failed to adequately communicate with them during the course of the representation. Further, her failure to refund the unearned fee or to provide any accounting in the matter constitutes a violation of Rule 1.15. Her apparent conversion of said funds constitutes a violation of Rule 8.4. Respondent's failure to provide a reply constitutes a violation of Rule 8.1.

COUNT III

(Trust Account Overdraft)

On September 14, 2011, ODC received information concerning an overdraft to an attorney trust account (IOLTA) registered to Respondent. This was followed by additional overdraft notifications of September 29, 2011 and October 6, 2011. In a letter of September 22, 2011, screening counsel James T. Daly requested that Respondent address the initial issue within ten days. Said letter was delivered to Respondent's primary bar registration address and received by her then assistant, Ms. B. J. Graham. As no reply was received, the matter was opened for investigation in December of 2011.

Notification of the opening of the investigation into this matter was sent to Respondent on December 13, 2011. However, ODC has received no confirmation of its receipt as of the date of the filing of this pleading. Nonetheless, the information obtained at this point evidences that said account was in fact overdrawn on the dates specified. As the notices indicate that the items presented were returned, it would appear that client funds have been compromised and that a violation of Rule 1.15 has occurred. Her failure to provide any response to the notification from ODC constitutes a violation of Rule 8.1.

COUNT IV
(The Beard Matter)

On August 31, 2011, ODC received the complaint of Mr. Jason Patrick Beard of Sarasota, Florida. Mr. Beard indicates that he retained Respondent to represent him in a child custody matter against the grandmother of his minor children in April of 2011. Mr. Beard indicates that he paid a total of $1,900.00 toward a $3,000.00 fee. Mr. Beard claims that Respondent then contacted opposing counsel, informing him of her representation.

Thereafter, according to the complaint, Respondent indicated that Mr. Beard's case would be stronger in six months to a year. At this point, it appears that a disagreement over the final fee arose, with Respondent indicating that the agreed upon fee was now $3,500.00. When Mr. Beard requested a refund of the fee paid, Respondent refused, claiming that the funds tendered had been exhausted. Respondent also failed to provide any accounting or itemized statement concerning this matter. This failure and her failure to return any portion of the unearned fee suggests that a violation of Rule 1.15 has occurred as well as a violation of Rule 8.4.

Notification of the opening of this investigation was sent to all of Respondent's then known addresses by letters of December 20 and December 29, 2011. Respondent's failure to provide any reply constitutes a violation of Rule 8.1.

COUNT V
(The Slater Matter)

On September 1, 2011, the Office of the Disciplinary Counsel received the ethical conduct complaint of Mr. George Franklin Slater. Mr. Slater alleges that he retained Respondent in November of 2010 to represent him in a divorce in Richland Parish, paying a total of $2,250.00.

Mr. Slater indicates that he does not believe that documented work of any significance has been done in this matter and desires that the sums paid be refunded, as Respondent has failed to perform the work for which she was paid. As of February 6, 2012, it does not appear that any pleadings have been filed relating to Mr. Slater in Richland Parish. As such, it would appear that violations of Rules 1.3, 1.4, and 1.15 have occurred.

Respondent's failure to refund the unearned portion of the fee constitutes a violation of Rule 8.4. Her failure to respond to the notification letter from ODC constitutes a violation of Rule 8.1.

COUNT VI
(The McDonald/Stewart Matter)

On January 13, 2012, the Office of the Disciplinary Counsel received correspondence from Mr. Arthur L. Stewart, an attorney in Monroe, Louisiana, who indicated that he has been retained to represent Mr. Robby Lee McDonald in a matter in which Mr. McDonald was formerly represented by [Respondent].[6] He indicates that his client had hired Respondent and paid approximately $3,300.00, but that, after several months, no work had been performed. Mr. Stewart indicates that all attempts to secure Mr. McDonald's file materials have been unsuccessful, despite Respondent's assurances. Further, requests for a refund of the sums paid to Respondent have been fruitless. The allegations set forth suggest that Rules 1.3 and 1.15 have occurred.

Mr. Stewart indicates that his present legal secretary is Ms. B. J. Graham, Respondent's former secretary. Mr. Stewart states that Ms. Graham "has personal knowledge of Boutwell's failure to communicate with clients, her neglect of client matters and her operating a law practice without a trust account." According to Mr. Stewart, "[t]here appears to be a great likelihood that she will continue to handle other matters in the manner describe above until there is some intervention by your office."

The ethical conduct complaint of Robby Lee McDonald was received on January 23, 2012. Mr. McDonald indicates that he retained Respondent in June of 2011 to file suit for nonpayment on a mortgage. Mr. McDonald claims that, after payment of $3,300.00, he was assured that suit would be filed in August of 2011. However, despite this assurance, no action appears to have been taken. Further, all attempts to contact Respondent have been unsuccessful, as her office appears to have been closed and her telephone disconnected. Said allegations suggest a continuing pattern of violations of Rules 1.3, 1.4, and 1.15.

Notification of the opening of this investigation was sent to Respondent at all known addresses, including a newly discovered West Monroe address obtained during investigation on February 2, 2012. As of this date, ODC has not been provided with documentation regarding the delivery of these items of correspondence.

Based upon the information provided herein, it would appear that Respondent has engaged in acts of neglect and failure to communicate with her clients as well as failing to cooperate with the Office of the Disciplinary Counsel in its investigations. Further, it would appear that there is a pattern of Respondent's accepting legal fees and then failing to perform the work for which she was retained. More troubling is the allegation that Respondent may be accepting said fees without placing them into a trust account, thus opening the

[6] The formal charges originally stated, "…in a matter in which Mr. McDonald was formally represented by *Complainant*." It is clear this is a typo and should read "…represented by *Respondent*."

door to possible commingling and conversion of client funds. Such would constitute violations of Rule 1.15 and 8.4.

COUNT VII
(The Jarvis Matter)

On March 5, 2012, the Office of the Disciplinary Counsel received the complaint of Angela Nicole Jarvis. Ms. Jarvis indicated that she had retained Respondent to represent her in a divorce and custody matter for a fee of $4,400.00, with an additional $1,200.00 paid for a deposition, and an additional $350.00 paid for the filing of a motion for contempt.

Ms. Jarvis indicates that Respondent failed to request spousal support on her behalf. Upon being unable to reach Respondent, Ms. Jarvis sought the services of another attorney who confirmed that the motion for which Ms. Jarvis had paid the additional $350.00 had not been filed. More troubling was the fact that no pleadings had been filed on Ms. Jarvis's behalf in these proceedings; no deposition was ever taken either.

Ms. Jarvis indicates that she has paid a total of $5,950.00 to Respondent, who has met with her on three occasions and appeared at a hearing officer conference. Respondent has further failed to provide any accounting concerning the fees in this matter, despite Ms. Jarvis's requests.

Respondent was sent notification of the opening of this investigation by certified mail on March 16, 2012. Said notifications were sent to all then-known addresses. As of this date, Respondent has failed to respond to any of these notifications, despite delivery confirmation at two of the known addresses on April 27, 2012.

Respondent's actions concerning Ms. Jarvis's complaint appear to constitute violations of Rules 1.3, concerning the neglect of a legal matter; Rule 1.4, concerning her failure to adequately communicate with her client; and Rules 1.15 and 8.4, as it would appear that Respondent has converted Ms. Jarvis's funds to her own use and failed to provide any accounting. Respondent's failure to tender any response to the notification sent by the office of the Disciplinary Counsel constitutes another violation of Rule 8.1 (c).

COUNT VIII
(The Spencer Matter)

On March 12, 2012, the Office of the Disciplinary Counsel received the complaint of Sean Keith Spencer, who indicates that he retained Respondent in August of 2011 to represent him in a child custody matter. It appears that Mr. Spencer's mother, Ms. Shirley Meeks, wired $3,900.00 to Respondent on August 4, 2011.

Mr. Spencer claims that Respondent failed to appear at scheduled court dates in August and November of 2011, as well as in January of 2012. At the January setting, Mr. Spencer indicates that the judge called Respondent on her personal cellular phone, at which time Respondent is alleged to have informed the judge that she was closing her practice and would not be representing Mr. Spencer any longer.

Despite Respondent's promises to refund the retainer in full, Mr. Spencer indicates that no refund has been received and that Respondent will not accept his calls. He claims that Respondent did none of the work for which she was retained.

Notification of the opening of this investigation was sent to all of Respondent's then known addresses by letter of March 23, 2012. As of this date, Respondent has failed to provide any response to this notification, though it would appear that one of the notification letters was received at a Tyler, Texas address that now appears to be Respondent's home address.

Respondent's conduct in this matter appears to constitute violations of Rules 1.3, concerning the neglect of a legal matter; Rule 1.4, concerning her failure to adequately communicate with her client; and Rules 1.15 and 8.4, as it would appear that Respondent has converted Mr. Spencer's funds to her own use and failed to provide any accounting. Respondent's failure to tender any response to the notification sent by the office of the Disciplinary Counsel constitutes an additional violation of Rule 8.l(c).

COUNT IX

(The Williams Matter)

On March 21, 2012, the Office of the Disciplinary Counsel received the complaint of Ms. Ginney Nicole Williams. Ms. Williams indicates that she retained Respondent on August 10, 2011 to represent her in a domestic matter. On August 10, 2011, Ms. Williams paid $3,900.00 and another $4,600.00 on October 6, 2011.

Ms. Williams indicates that Respondent never forwarded documents to opposing counsel concerning the name change and income assignment so that they could be filed with the court. Each time Ms. Williams inquired about these items, Respondent assured her that she was working on the matter. Thereafter, Ms. Williams indicates that she was unable to reach Respondent for over a month.

Respondent then replied to Ms. Williams in January of 2012, claiming that one of her former employees had stolen the money that Ms. Williams had paid to her concerning the matter. She claimed that this was the reason for the delay in proceeding. However, on January 13, 2012, Respondent met Ms. Williams at the courthouse and informed her that she had actually lent the money in question to a

relative who did not pay her back. Respondent stated that she was embarrassed by this and that this was the reason for avoiding Ms. Williams's calls and texts.

Ms. Williams terminated Respondent via a certified letter on February 8, 2012 and requested an accounting as well as a refund of any unearned fees. She indicates that Respondent never replied to this request.

On March 27, 2012, notification letters were sent to all of Respondent's known addresses. One such letter appears to have been accepted by Respondent individually on April 23, 2012. Nonetheless, Respondent has not provided any reply as of this date.

Respondent's conduct relating to Ms. Williams's matter constitute violations of Rules 1.3, concerning the neglect of a legal matter; Rule 1.4, concerning her failure to adequately communicate with her client; and Rule 1.15, as it would appear that Respondent has admittedly converted Ms. Jarvis's funds to her own use and failed to provide any accounting. This conduct also constitutes a violation of Rule 8.4. Respondent's failure to tender any response to the notification sent by the office of the Disciplinary Counsel constitutes another violation of Rule 8.1(c).

COUNT X
(The Curtain Matter)

On April 12, 2012, the Office of the Disciplinary Counsel received the complaint of Richard Patrick Curtain, who retained Respondent to represent his granddaughter, Carly Phillips, in two custody matters in May of 2011. During the proceedings concerning the first child, opposing counsel advised Respondent that the father of Carly Phillips's second child was filing for custody. Mr. Curtain retained Respondent in that matter to represent Ms. Phillips, paying her $3,200.00 on May 11, 2011. However, the father of the second child ultimately never took any action toward seeking custody. The first matter was settled.

An inquiry was made to Respondent regarding a refund of the fee paid in the second matter; however, Respondent indicated that the money should be left in her possession in the event that it were needed in the initial custody matter. Additional requests for a refund were never afforded any satisfactory response, according to Mr. Curtain. Respondent also missed an appointment in October of 2011 on this matter.

On April 25, 2012, notification of the opening of this investigation was sent to Respondent at her primary bar registration address and at her newly discovered residential address in Tyler, Texas. Though the letter sent to her primary bar registration address appears to have been unclaimed, the certified mailing receipt indicates that the letter sent to her Tyler, Texas address was delivered on April 27, 2012. As of this date, no response has been received from Respondent in this matter.

Respondent's conduct in this matter appears to constitute a violation of Rules 1.15 and 8.4 in that she appears to have converted unearned client funds. Her failure to cooperate with the Office of the Disciplinary Counsel in its investigation constitutes a violation of Rule 8.1(c).

COUNT XI
(The Hearn Matter)

On April 30, 2012, the Office of the Disciplinary Counsel received the complaint of Jessica Amber Hearne and Aaron Michael Hearne, who had retained Respondent to represent them in two separate custody matters for a fee of $5,000.00. Ms. Hearne indicates that all of the requested paperwork was ready by February 23, 2012.

The Hearnes indicated that they attempted to meet with Respondent, but were given various excuses as to why they could not. It does not appear that Respondent ever advised them of her interim suspension of February 16, 2012.

On March 7, 2012, Ms. Hearne indicates that Respondent contacted her, indicating that she and her family had moved to Tyler, Texas and that she would now be able to work on their legal matters. Respondent promised to have the petitions ready for review within two weeks.

After waiting for two weeks, Ms. Hearne indicates that she contacted Respondent about the status of these matters. Respondent indicated that an emergency had arisen in another case but that she would have the Hearnes' matters by Thursday, March 29, 2012.

Ms. Hearne indicates that she never received any further correspondence from Respondent. Further, Respondent's telephone number had been changed or was no longer in service. Ms. Hearne indicates that it was only thereafter that she learned that Respondent had been placed on interim suspension on February 16, 2012. Ms. Hearne suggests that Respondent accepted their money with no intention of meeting her obligations to them. Ms. Hearne stresses that Respondent never indicated that she was placed on interim suspension at any time.

Notification of the opening of this investigation was forwarded to Respondent via certified mail to her primary bar registration address and her Tyler, Texas address on May 7, 2012. The certified mailing receipt indicates that said notification was delivered to the Tyler, Texas address on May 11, 2012. As of this date, no reply has been received as required.

Respondent's conduct in this matter constitutes violations of Rules 1.3, concerning the neglect of the Hearnes' legal matters; Rule 1.4 in failing to adequately communicate with her clients; and Rules 1.15 and 8.4 in converting

> her clients' legal fees. Her failure to provide a response to the notification letter from the Office of the Disciplinary Counsel constitutes a violation of Rule 8.1(c).
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> Respondent's actions subsequent to her interim suspension, in holding herself out as an attorney or lawyer authorized to practice law (which is clearly illustrated in the e-mail messages included in the Hearnes' complaint) constitutes a violation of Rule 5.5 relating to the unauthorized practice of law. This conduct also is in violation of the provisions of Louisiana Supreme Court Rule XIX, Section 26, which requires that an attorney placed on interim suspension provide notice to all clients.

THE HEARING COMMITTEE REPORT

As noted above, the Committee issued its report on November 13, 2012. The Committee made the following findings of fact:

FINDINGS OF FACT

> The Committee finds that the facts support that Respondent violated the Rules of Professional Conduct, 1.15, 1.3, 1.4, 5.5, 8.1, and 8.4.

Hearing Committee Report pg. 11.

The Committee concluded that the nature of the multiple charges and findings of fact combined with the abuse of trust/financial accounts with which she had been entrusted is indicative of the Respondent's serious and continuing flaws in judgment and character. They also concluded that her clients, the public, the legal system and the legal profession would continue to suffer if she continued to practice law. The Committee, relying on the *ABA Standards for Imposing Lawyer Sanctions*, unanimously decided that disbarment was the appropriate sanction.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. THE STANDARD OF REVIEW

The powers and duties of the Disciplinary Board are defined in Section 2 of the Louisiana Supreme Court Rule XIX, Rules for Lawyer Disciplinary Enforcement. Subsection (G)(2)(a) states that the Board is "to perform appellate review functions, consisting of review of the

findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges … and prepare and forward to the court its own findings, if any, and recommendations." Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of "manifest error." *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts *de novo* review of the hearing committee's application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004 (La. Atty. Disc. Bd. 1/22/92).

A. THE MANIFEST ERROR INQUIRY

The factual findings of the Committee do not appear to be manifestly erroneous. The findings of the Committee are supported by the testimony and documentary evidence in the record.

B. DE NOVO REVIEW

In cases in which the lawyer does not answer the formal charges, the factual allegations of those charges are deemed admitted. Supreme Court Rule XIX, § 11(E)(3). Thus, the ODC bears no additional burden to prove the factual allegations contained in the formal charges after those charges have been deemed admitted. However, the language of §11(E)(3) does not encompass legal conclusions that flow from the factual allegations. If the legal conclusion the ODC seeks to prove (i.e., a violation of a specific rule) is not readily apparent from the deemed admitted facts, additional evidence may need to be submitted in order to prove the legal conclusions that flow from the admitted factual allegations. *In re: Donnan*, 01-3058 (La. 1/10/03), 838 So. 2d 715.

The Committee appears to have correctly applied the Rules of Professional Conduct. Each Rule is briefly discussed below.

Rule 1.3: Rule 1.3 states that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." In the Valentine matter, Respondent allowed a default judgment to be entered against her client despite at least one extension of time being granted in which to file an answer.[7] In the Merritt matter, Respondent failed to file a request for an emergency hearing concerning the custody of a minor child.[8] In the Slater matter, Respondent was hired to handle a divorce. Respondent failed to perform any of the work she was hired to perform and never filed any pleadings in the matter.[9] In the McDonald/Stewart matter, Respondent failed to perform any work after several months of representation. The client was assured suit would be filed, but no action was ever taken.[10]

In the Jarvis matter, Respondent was hired and paid to handle a divorce and custody matter. Respondent failed to take any depositions or file any motions or pleadings on behalf of Ms. Jarvis.[11] Her inaction necessitated the hiring of a new attorney who discovered Respondent's failures.

In the Spencer matter, Respondent failed to appear at three scheduled court dates and did not perform any of the work she was retained to complete. When contacted by the judge, Respondent indicated that she would no longer be practicing law or representing Mr. Spencer.[12] In the Williams matter, Respondent failed to forward documents to opposing counsel so they could be finalized and filed with the court.[13] In the Curtain matter, Respondent missed an appointment concerning her client's custody case.[14]

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[7] ODC's Deemed Admitted Submission, p. 2.
[8] *Id.* at p. 4.
[9] *Id.* at p. 7.
[10] *Id.* at p. 8.
[11] *Id.* at p. 9.
[12] *Id.* at p. 10.
[13] *Id.* at p. 11.
[14] *Id.* at p. 12.

In the Hearn matter, Respondent accepted her clients' funds without any intention of performing the work she was hired to complete.[15] Respondent, after a lengthy period without communication, informed the Hearns that she had been unable to work on the case while relocating her family to Texas but would now be free to handle the case.[16] After two more weeks of inaction, the clients contacted Respondent who claimed an emergency in another case prevented her from working on the matter. Following this exchange, the Hearnes were no longer able to contact Respondent. Thus, Respondent violated Rule 1.3.

Rule 1.4: Rule 1.4 states that a lawyer shall "…reasonably consult with the client about the means by which the client's objectives are to be accomplished…[and] keep the client reasonably informed about the status of the matter…[and] promptly comply with reasonable requests for information." In the Merritt matter, Respondent's telephone was disconnected mid representation.[17] The Merritts terminated representation via a November 1, 2011 letter, yet Respondent had still not communicated with the Merritts as of February 3, 2012.[18]

In the McDonald/Stewart matter, Respondent has not provided her former client's file to his new attorney despite multiple requests and her assurances that she would deliver the file to him.[19] Additionally, all attempts by the client to contact Respondent were unsuccessful as her office appeared to be closed and her telephone line disconnected.[20] In the Spencer matter, Respondent refused to answer her former client's phone calls.[21] In the Williams matter,

[15] *Id*. at p. 14.
[16] ODC's Deemed Admitted Submission p. 13.
[17] *Id*.
[18] *Id*.
[19] *Id*. at p. 7.
[20] *Id*. at p. 8.
[21] *Id*. at p. 10.

Respondent represented to opposing counsel that she was working on the matter and then refused to communicate for over a month.[22]

In the Hearn matter, Respondent provided various excuses as to why she could not meet them as requested on multiple occasions. Additionally, she inadequately communicated with the Hearns until she ceased communication with them altogether. Respondent has not communicated with the Hearns since March 2012, when her telephone number was changed or was disconnected.[23] Thus, Respondent violated Rule 1.4.

Rule 1.15: Rule 1.15 states "[a] lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property…." Additionally, "[a] lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f)."

In the Valentine matter, Respondent failed to provide an accounting of fees earned and to refund the unearned portion of her fee.[24] In the Merritt matter, Respondent was tendered a fee for a service she did not perform. A refund of the retainer was requested by the clients, but no fees have been reimbursed.[25] Additionally, ODC received three attorney trust account overdraft notifications from Respondent's bank.[26] In the Beard matter, Respondent and her client disagreed over the final fee. The client requested a refund of the fee paid; however, Respondent claimed the funds were exhausted. Respondent failed to provide an accounting or itemized

[22] *Id.*
[23] ODC's Deemed Admitted Submission p. 14.
[24] *Id.* at p. 2.
[25] *Id.* at p. 4.
[26] *Id.* at p. 5.

statement concerning the matter.[27] In the Slater[28] and Curtain matters,[29] Respondent failed to refund the unearned fee. In the McDonald/Stewart matter, Respondent failed to refund her unearned portion of her fee and funds were not placed into a trust account.[30] In the Jarvis,[31] Spencer,[32] and Williams[33] matters, Respondent converted these client's funds to her own use and failed to provide an accounting. Her failure to refund the unearned fees or to provide an accounting in these multiple instances constitutes multiple violations of Rule 1.15.

Rule 5.5: Rule 5.5 states "[a] lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so." In the Hearn matter, Respondent failed to inform her clients of her interim suspension,[34] and she held herself out as an attorney authorized to practice law.[35] Thus, Respondent violated Rule 5.5.

Rule 8.1: Rule 8.1(c) states that it is professional misconduct for a lawyer to refuse to cooperate with the ODC in its investigation of any matter before it. Notice of the Valentine matter was issued to Respondent on October 28, 2011, and the postal receipt indicates it was received by her assistant on October 31, 2011. Despite receipt, Respondent failed to contact the ODC or submit any form of reply.[36] On November 28, 2011, a subpoena was issued commanding Respondent to appear at ODC for a sworn statement, but the subpoena was returned without service because Respondent could not be located.[37] On January 3, 2012, the subpoena was reissued and

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[27] *Id*. at p. 6.
[28] *Id*. at p. 7.
[29] *Id*. at p. 12.
[30] *Id*. at p. 9.
[31] *Id*.
[32] ODC's Deemed Admitted Submission, p. 10.
[33] *Id*. at p. 11.
[34] This conduct is also a violation of Louisiana Supreme Court Rule XIX, Section 26, which requires that an attorney placed on interim suspension provide notice to all clients.
[35] ODC's Deemed Admitted Submission, p. 14.
[36] *Id*. at p. 2.
[37] *Id*. at p. 3.

personally served on Respondent by ODC Staff Investigator Jeremy Norwood.[38] Again, Respondent failed to appear and did not provide any of the documentation requested.

Notice of the Merritt matter was issued to Respondent via certified mail to all of her known addresses. A return receipt evidenced a delivery at the Respondent's home address on January 11, 2012, yet no reply was received by the ODC.[39]

In response to the overdraft notifications received by the ODC, a letter was issued to Respondent directing her to address the issue within ten days, but Respondent failed to reply.[40] As a result, an investigation was opened and notice was issued to Respondent in December 2011, however, ODC has not received notice of receipt. [41]

Notice of an investigation into the Beard matter was sent to all then-known addresses on December 20 and 29, 2011, but again, Respondent failed to reply in any manner.[42]

Notification of the opening of the McDonald/Stewart investigation was sent to all then-known addresses, including a newly-discovered address obtained during the investigation on February 2, 2012.[43] Again, Respondent failed to reply to this notice in any manner.

Notice of the investigation into the Jarvis matter was issued via certified mail on March 16, 2012, to all then-known addresses. Respondent failed to respond despite delivery confirmation at two of the addresses on April 27, 2012.[44]

Notice in the Spencer matter was issued to all of Respondent's then-known addresses on March 23, 2012. Respondent failed to provide any response despite the receipt of notice at Respondent's new home address in Tyler, Texas.[45]

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[38] *Id*.
[39] *Id*. at p. 4.
[40] ODC's Deemed Admitted Submission, p. 5.
[41] *Id*.
[42] *Id*. at p. 6.
[43] *Id*. at p. 8.
[44] *Id*. at p. 9.

Notification letters in the Williams matter were issued to all respondent's then-known addresses on March 27, 2012. Respondent personally received one of these letters on April 23, 2012. Nonetheless, she still has not provided a response.[46]

On April 25, 2012, Respondent was issued notice of the investigation into the Curtain matter via certified mail.[47] Notice was sent to her bar registration address as well as her Tyler, Texas address. The certified mail receipt indicates the letter was received in Tyler, Texas on April 27, 2012. Despite receipt, Respondent has refused to reply to this notice.

Notification of opening an investigation into the Hearn matter was issued via certified mail to her primary bar address and her Tyler, Texas, address on May 7, 2012. Despite receipt on May 11, 2012, Respondent has still not replied as required. Thus, Respondent violated Rule 8.1.

Rule 8.4: Rule 8.4(a) states that it is professional misconduct for a lawyer to "violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another." Respondent violated this rule by engaging in the misconduct addressed above. Rule 8.4(c) states that it is professional misconduct to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Respondent's conversion of clients' funds in the Valentine,[48] Beard,[49] Slater,[50] Jarvis[51] and Spencer[52] matters constitutes a violation of Rule 8.4.

In the McDonald/Stewart matter, it appears that Respondent accepted fees without placing them into her trust account rendering them susceptible to commingling and conversion.[53]

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[45] *Id*. at p. 10.
[46] *Id*. at p. 12.
[47] ODC's Deemed Admitted Submission p. 13.
[48] *Id*. at p. 2.
[49] *Id*. at p. 6.
[50] *Id*. at p. 7.
[51] *Id*. at p. 9.
[52] *Id*. at p. 10.
[53] *Id*. at p. 8.

In the Williams matter, Respondent claimed that her employee had stolen the money provided for representation and that was the cause of her delay in proceeding. However, Respondent later admitted that she had lent the money to a relative who did not repay the loan.[54]

In the Curtain manner, Respondent refused to return an unearned fee. After one of the two matters was settled, her client requested a refund of the unearned fees. Respondent informed the client that she should retain the funds in case they were needed in the other matter. Following this initial request, all subsequent requests went unanswered.[55] Therefore, the record supports the conclusion that Respondent violated Rule 8.4.

II. THE APPROPRIATE SANCTION

A. APPLICATION OF RULE XIX, §10(C) FACTORS

Louisiana Supreme Court Rule XIX, §10(C) states that in imposing a sanction after a finding of lawyer misconduct, the Court or Board shall consider the following factors:

> 1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
> 2. whether the lawyer acted intentionally, knowingly, or negligently;
> 3. the amount of actual or potential injury caused by the lawyer's misconduct; and
> 4. the existence of any aggravating or mitigating factors.

Here, Respondent violated duties to her client, to the public, and the profession. Respondent intentionally failed to communicate with her clients, intentionally neglected legal matters, knowingly engaged in conduct involving deceit and misrepresentation, intentionally failed to refund unearned fees, intentionally failed to return client's files, and intentionally failed to cooperate with ODC during these disciplinary matters.

By engaging in this misconduct, Respondent has caused serious injury to multiple clients. In the case of Ms. Valentine, Respondent's failure to prevent a default judgment has proven

[54] *Id.* at p. 11.
[55] ODC's Deemed Admitted Submission p. 13.

problematic in Ms. Valentines' attempts to refinance her home.[56] Additionally, Ms. Jarvis suffered injury as she was left without any spousal support.[57] Many of her clients were forced to retain alternate counsel, causing additional financial burden due to Respondent's refusal to refund the unearned fees in her possession. The subsequent representation was further impaired by Respondent's refusal to return the clients' files.

The Board adopts the following aggravating factors: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules or orders of the disciplinary agency, a refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victims, and an indifference to making restitution.

The Board adopts the absence of a prior disciplinary record as the sole mitigating factor.

B. THE ABA STANDARDS AND CASE LAW

A review of the *ABA Standards for Imposing Lawyer Sanctions* ("*Standard(s)*") indicates that disbarment is the appropriate baseline sanction.

> ***Standard* 4.11**
>
> Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
>
> ***Standard* 4.41**
>
> Disbarment is generally appropriate when:
>
> a. a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
> b. a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
> c. a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

[56] *Id*. at p. 2.
[57] *Id*. at p. 9.

***Standard* 4.61**

Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client.

***Standard* 5.11**

Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Standard 7.1

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

In accepting fees from her clients and failing to provide services, Respondent has intentionally converted funds from numerous sources causing injury to multiple clients. By abandoning her law practice, she has caused serious injury to her clients. She has knowingly failed to perform services for her clients and has engaged in a clear pattern of neglect with respect to client matters. Respondent continued to operate as an attorney although she was placed on interim suspension from the practice of law on February 16, 2012. Therefore, disbarment is the appropriate baseline sanction.

PERMANENT DISBARMENT

Supreme Court Rule XIX, Appendix E sets forth the guidelines for which misconduct warrants permanent disbarment. Guideline 1 states that permanent disbarment may be appropriate in cases of "[r]epeated or multiple instances of intentional conversion of client funds with substantial harm." Here, Respondent has engaged in the conversion of funds from ten different clients. This pattern of misconduct clearly satisfies Guideline 1.

CASE LAW

In *In re Elise M. Beauchamp*, the Louisiana Supreme Court ordered the permanent disbarment of Ms. Beauchamp as a result of thirteen different instances of misconduct. 11-1144 (La. 9/23/2011), 70 So.3d 781. The facts were deemed admitted and she was disciplined as a result of her neglect of legal matters, failure to communicate with clients, failure to refund unearned fees, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and failure to cooperate with the ODC in several investigations.

The Court found that "respondent knowingly and intentionally violated duties owed to her clients and the legal profession. She caused harm to her clients and the attorney disciplinary system. The baseline sanction for this type of misconduct is disbarment."

Based on the respondent's failure to timely refund unearned fees and costs to several clients, the Court found respondent's conduct "amounts to repeated or multiple instances of intentional conversion of client funds with substantial harm as required by Guideline 1 of the permanent disbarment guidelines set forth in Supreme Court Rule XIX, Appendix E."

In *In re Sherman G. Ruth*, the Louisiana Supreme Court permanently disbarred Mr. Ruth as a result of seven counts of misconduct. 12-0620 (La. 6/15/2012), 90 So.3d 1004. The factual allegations were deemed admitted and the Court found they supported a finding that respondent

neglected legal matters, failed to communicate with clients, failed to refund unearned fees, failed to timely remit funds to clients and third parties, and failed to cooperate with the ODC in its investigations.

The Court found "respondent knowingly and intentionally violated duties owed to his clients, the public, the legal system, and the legal profession. His misconduct caused significant actual harm. The baseline sanction for this type of misconduct is disbarment." The Court also found that respondent engaged in repeated or multiple instances of intentional conversion of client funds with substantial harm, as required by Guideline 1 of the permanent disbarment guidelines set forth in Supreme Court Rule XIX, Appendix E.

In *In re Jeffrey A. Favors*, the Louisiana Supreme Court permanently disbarred Mr. Favors as a result of sixteen counts of misconduct. 06-1339 (La. 9/29/2006), 938 So.2d 677. Based on the testimony, evidence, and deemed admitted facts, the Court determined the respondent failed to provide competent representation to his clients, neglected his clients' legal matters, failed to communicate with his clients, failed to refund unearned fees, converted client and third-party funds to his own use, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, abandoned his law practice when he relocated to Georgia without notice to his clients, and failed to cooperate with the ODC in numerous investigations.

The Court determined the "baseline sanction for this type of misconduct is clearly disbarment. Therefore, the only issue presented for our consideration is whether respondent's misconduct is so egregious as to warrant permanent disbarment." Relying on Supreme Court Rule XIX, Appendix E, Guideline 1, the Court determined that the respondent's misconduct warranted permanent disbarment. The Court found that Mr. Favors intentionally converted funds from several clients and failed to make restitution. Significant harm was suffered by one client

in particular. The Court maintained that the "intentional conversion of client funds, coupled with the numerous other acts of misconduct, indicates that respondent lacks the requisite honesty and integrity to practice law."

Disbarment as recommended by the Committee is the appropriate baseline sanction as determined by the *ABA Standards*. However, the Permanent Disbarment Guidelines and case law necessitate an upward deviation from the baseline. Respondent converted the funds of ten clients. In such egregious circumstances, permanent disbarment is the appropriate sanction. Accordingly, the Board recommends that Respondent be permanently disbarred from the practice of law.

CONCLUSION

The Board adopts the deemed admitted factual findings and legal conclusions of the Committee. However, the Board rejects the sanction recommended by the Committee as too lenient. Accordingly, the Board recommends that Respondent be permanently disbarred from the practice of law. The Board also recommends that Respondent pay restitution to all complainants discussed herein. Finally, Respondent should be assessed with the costs and expenses of this proceeding.

RECOMMENDATION

The Board recommends that Respondent, Brandi Traylor Boutwell, be permanently disbarred from the practice of law. The Board also recommends that Respondent pay restitution to her clients and be assessed with the costs and expenses of this proceeding.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

Carl A. Butler
Stephen R. Chiccarelli
George L. Crain, Jr.
Edwin G. Preis, Jr.
Tara L. Mason
R. Lewis Smith, Jr.
R. Steven Tew
Linda P. Spain

BY: _____
Jamie E. Fontenot
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

RULE 1.3. DILIGENCE
A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4. COMMUNICATION
(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent as defined in Rule 1.0(e) is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) The lawyer shall give the client sufficient information to participate intel1igently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

(c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made including but not limited to repayment obligations the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

RULE 1.15. SAFEKEEPING PROPERTY
(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer" s primary office is situated, if not within Louisiana: or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm. A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a client trust account. On client trust accounts, cash withdrawals and checks made payable to "Cash" are prohibited.

(g) A lawyer shall create and maintain an "IOLTA Account." which is a pooled interest-bearing client trust account for funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.

> (I) IOLTA Accounts shall be of a type approved and authorized by the Louisiana Bar Foundation and maintained only in "eligible" financial institutions as approved and certified by the Louisiana Bar Foundation. The Louisiana Bar Foundation shall establish regulations, subject to approval by the Supreme Court of Louisiana, governing the determination that a financial institution is eligible to hold IOLTA Accounts and shall at least annually publish a list of LBF-approved/certified eligible financial institutions. Participation in the IOLTA program is voluntary for financial institutions. IOLTA Accounts shall be established at a bank or savings and loan association authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government or at an open-end investment company registered with

the Securities and Exchange Commission authorized by federal or state law to do business in Louisiana which shall be invested solely in or fully collateralized by U.S. Government Securities with total assets of at least $250,000,000 and in order for a financial institution to be approved and certified by the Louisiana Bar Foundation as eligible, shall comply with the following provisions:

(A) No earnings from such an account shall be made available to a lawyer or law firm.

(B) Such account shall include all funds of clients or third persons which are nominal in amount or to be held for such a short period of time the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.

(C) Funds in each interest-bearing client trust account shall be subject to withdrawal upon request and without delay, except as permitted by law.

(2) To be approved and certified by the Louisiana Bar Foundation as eligible financial institutions shall maintain IOLTA Accounts which pay an interest rate comparable to the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when IOLTA Accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors in addition to the IOLTA Account balance customarily considered by the institution when setting interest rates or dividends for its customers provided that such factors do not discriminate between IOLTA Accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA Account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non-IOLTA customers, but the eligible institution may elect to pay a higher interest or dividend rate on IOLTA Accounts.

(3) To be approved and certified by the Louisiana Bar Foundation as eligible, a financial institution may achieve rate comparability required in (g)(2) by:

(A) Establishing the IOLTA Account as:

(1) an interest-bearing checking account; (2) a money market deposit account with or tied to checking; (3) a sweep account which is a money market fund or daily (overnight) financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or (4) an open-end money market fund solely invested in or fully collateralized by U.S. Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a "money-market fund" as that term is

defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least $250,000,000. "U.S. Government Securities" refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(B) Paying the comparable rate on the IOLTA checking account in lieu of establishing the IOLTA Account as the higher rate product; or

(C) Paying a "benchmark" amount of qualifying funds equal to 60% of the Federal Fund Target Rate as of the first business day of the quarter or other IOLTA remitting period: no fees may be deducted from this amount which is deemed already to be net of "allowable reasonable fees."'

(4) Lawyers or law firms depositing the funds of clients or third persons in an IOLTA Account shall direct the depository institution:

(A) To remit interest or dividends net of any allowable reasonable fees on the average monthly balance in the account or as otherwise computed in accordance with an eligible institution's standard accounting practice at least quarterly to the Louisiana Bar Foundation. Inc.

(B) to transmit with each remittance to the Foundation a statement, on a form approved by the LBF, showing the name of the lawyer or law firm for whom the remittance is sent and for each account: the rate of interest or dividend applied; the amount of interest or dividends earned; the types of fees deducted. if any: and the average account balance for each account for each month of the period in which the report is made; and

(C) to transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.

(5)"Allowable reasonable fees" for IOLTA Accounts are: per check charges; per deposit charges; a fee in lieu of minimum balance; sweep fees and a reasonable IOLTA Account administrative fee. All other fees are the responsibility of and may be charged to, the lawyer or law firm maintaining the IOLTA Account. Fees or service charges that are not "allowable reasonable fees" include, but are not limited to: the cost of check printing; deposit stamps; NSF charges; collection charges; wire transfers; and fees for cash management. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA Accounts.

(6) A lawyer is not required independently to determine whether an interest rate is comparable to the highest rate or dividend generally available and shall be in presumptive

compliance with Rule 1.15(g) by maintaining a client trust account of the type approved and authorized by the Louisiana Bar Foundation at an "eligible" financial institution.

RULE 5.5. UNAUTHORIZED PRACTICE OF LAW; MULTI.JURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shal1 not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission: or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro *hac vice* admission and that are provided by an attorney who has received a limited license to practice law pursuant to La. S. Ct. Rule XVII. §14; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) (I) A lawyer shall not:

(i) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law', any person the attorney knows or reasonably should know is a disbarred attorney, during the period of disbarment or any person the attorney knows or reasonably should know is an attorney who has permanently resigned from the practice of law in lieu of discipline; or

(ii) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a suspended attorney, or an attorney who has been transferred to disability inactive status, during the period of suspension or transfer, unless first preceded by the submission of a fully executed employment registration statement to the Office of Disciplinary Counsel on a registration form provided by the Louisiana Attorney Disciplinary Board, and approved by the Louisiana Supreme Court.

(2) The registration form provided for in Section (e)(1) shall include:

(i) the identity and bar roll number of the suspended or transferred attorney sought to be hired;

(ii) the identity and bar roll number of the attorney having direct supervisory responsibility over the suspended attorney, or the attorney transferred to disability inactive status, throughout the duration of employment or association:

(iii) a list of all duties and activities to be assigned to the suspended attorney, or the attorney transferred to disability inactive status during the period of employment or association:

(iv) the terms of employment of the suspended attorney, or the attorney transferred to disability inactive status, including method of compensation;

(iv) a statement by the employing attorney that includes a consent to random compliance audits, to be conducted by the Office of Disciplinary Counsel, at any time during the employment or association of the suspended attorney or the attorney transferred to disability inactive status: and

(v) a statement by the employing attorney certifying that the order giving rise to the suspension or transfer of the proposed employee has been provided for review and consideration in advance of employment by the suspended attorney or the attorney transferred to disability inactive status.

(3) For purposes of this Rule, the practice of law shall include the following activities:

(i) holding oneself out as an attorney or lawyer authorized to practice law;

(ii) rendering legal consultation or advice to a client;

(iii) appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing ot1icer, or governmental body operating in an adjudicative capacity, including submission of pleadings, except as may otherwise be permitted by law;

(iii) appearing as a representative of the client at a deposition or other discovery matter;

(iv) negotiating or transacting any matter for or on behalf of a client with third parties;

(v) otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law·,

(4) In addition, a suspended lawyer or a lawyer transferred to disability inactive status shall not receive, disburse or otherwise handle client funds,

(5) Upon termination of the suspended attorney, or the attorney transferred to disability inactive status, the employing attorney having direct supervisory authority shall promptly serve upon the Office of Disciplinary Counsel written notice of the termination.

RULE 8.1. BAR ADMISSION AND DISCIPLINARY MATTERS
An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) Knowingly make a false statement of material fact;

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6: or

(c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege

RULE 8.4. MISCONDUCT
It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct knowingly assist or induce another to do so or do so through the acts of another;

(b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects:

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a judge, judicial officer, governmental agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law: or

(g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

APPENDIX E: GUIDELINES DEPICTING CONDUCT WHICH MIGHT WARRANT PERMANENT DISBARMENT, SUGGESTED BY THE COMMITTEE TO STUDY PERMANENT DISBARMENT

The following guidelines illustrate the types of conduct which might warrant permanent disbarment. These guidelines are not intended to bind the Supreme Court of Louisiana in its decision making. It is hoped that these guidelines provide useful information to the public and to lawyers concerning the types of conduct the Court might consider to be worthy of permanent disbarment.

GUIDELINE 1. Repeated or multiple instances of intentional conversion of client funds with substantial harm.

GUIDELINE 2. Intentional corruption of the judicial process, including but not limited to bribery, perjury, and subornation of perjury.

GUIDELINE 3. An intentional homicide conviction.

GUIDELINE 4. Sexual misconduct which results in a felony criminal conviction, such as rape or child molestation.

GUIDELINE 5. Conviction of a felony involving physical coercion or substantial damage to person or property, including but not limited to armed robbery, arson, or kidnapping.

GUIDELINE 6. Insurance fraud, including but not limited to staged accidents or widespread runner-based solicitation.

GUIDELINE 7. Malfeasance in office which results in a felony conviction and which involves fraud.

GUIDELINE 8. Following notice, engaging in the unauthorized practice of law subsequent to resigning from the Bar Association, or during the period of time in which the lawyer is suspended from the practice of law or disbarred.

GUIDELINE 9. Instances of serious attorney misconduct or conviction of a serious crime, when the misconduct or conviction is preceded by suspension or disbarment for prior instances of serious attorney misconduct or conviction of a serious crime. Serious crime is defined in Rule XIX, Section 19. Serious attorney misconduct is defined for purposes of these guidelines as any misconduct which results in a suspension of more than one year.